

**Presentment Date and Time: March 24, 2021, 12:00 noon (EDT)**  
**Objection Deadline: March 24, 2021, 11:30 a.m. (EDT)**

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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re: : Chapter 11  
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MOTORS LIQUIDATION COMPANY, *et al.*, : Case No. 09-50026 (MG)  
f/k/a General Motors Corp., *et al.*, :  
:  
Debtors. : (Jointly Administered)  
:  
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**MOTION OF THE UNITED STATES OF AMERICA FOR AN ORDER APPROVING  
THE REAPPOINTMENT OF EPLET, LLC TO A THIRD TERM AS  
ADMINISTRATIVE TRUSTEE OF THE ENVIRONMENTAL RESPONSE TRUST**

TO THE HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE:

The United States of America (the “United States”), by its attorney Audrey Strauss,  
United States Attorney for the Southern District of New York, hereby respectfully moves this  
Court for reappointment of EPLET, LLC, by and through Elliott P. Laws, Esq., as  
Administrative Trustee of the Revitalizing Auto Communities Environmental Response Trust  
(“RACER”), which is charged with carrying out needed environmental actions at certain  
properties formerly owned by Debtor Motors Liquidation Company (f/k/a General Motors

Corporation, hereinafter, “MLC”), and its affiliated debtors (collectively, the “Debtors”). The recitations set forth herein reflect the recommendation of the United States to reappoint the Administrative Trustee, and the reasons therefor.

### **RELIEF REQUESTED AND RELEVANT BACKGROUND**

1. The United States moves pursuant to section 105(a) of title 11, United States Code (the “Bankruptcy Code”), 11 U.S.C. § 105(a), for approval of the reappointment to a third five-year term of EPLET, LLC, as Administrative Trustee of RACER, without modification of the now-governing terms and conditions set forth in the governing settlement and trust agreements.

2. The RACER Trust was created through the confirmed Plan of Liquidation in this matter and an annexed consent decree and settlement agreement (the “Settlement Agreement” or “ERT CD”) by and between the United States, the since-liquidated Debtors, 14 signatory states (the “States”), and the St. Regis Mohawk Tribe (the “Tribe”), which among other things created RACER, transferred to it title to approximately 89 Debtor-owned properties, many of which required environmental cleanup response actions, funded RACER, and charged RACER with, in essence, owning, cleaning up, and selling or otherwise repurposing those properties for beneficial use. *See* Dkt. No. 9941 (findings of fact, conclusions of law, and order confirming Debtors’ plan of liquidation), at 19 ¶ 7 (approving settlement that led to creation of RACER, and approving and appointing EPLET, LLC as RACER’s Administrative Trustee). The ERT CD as approved by the Court is Exhibit C to the confirmed Plan of Liquidation, and it appears beginning at page 283 of 888 in the as-docketed copy of Docket Entry 9941 that is available at [www.motorsliquidationdocket.com](http://www.motorsliquidationdocket.com) as well on the Court’s official docket. Similar environmental response trusts have been created in a number of bankruptcies to provide for cleanup of

contaminated properties of liquidating debtors; RACER is one of the largest such trusts created. At its inception, RACER was funded with approximately \$499 million for use in carrying out needed environmental actions, as well as with substantial additional funds to support the trust's administration. ERT CD ¶ 32 (Dkt. No. 9941, Ex. C). The United States is the RACER Trust's beneficiary. ERT CD ¶ 38. The United States, the States, and the Tribe have rights and powers as set forth in the Settlement Agreement and RACER's governing Trust Agreement. *Id.* ¶ 39.

3. In accordance with paragraph 7 of the confirmation order (Dkt. No. 9941) and paragraph 42 of the ERT CD, EPLET, LLC, "not individually but solely in its representative capacity," was appointed Administrative Trustee of RACER, "by and through, Elliott Laws, not individually but solely in his capacity as president, manager or managing member of the Administrative Trustee." ERT CD ¶ 42. The ERT CD specifies that: "The term of the Administrative Trustee shall be for five years at which time the Administrative Trustee may be reappointed or terminated by the Bankruptcy Court upon recommendation by the United States after consultation with the States and Tribe." *Id.*

4. EPLET, LLC, by and through Elliott Laws, has served as RACER's Administrative Trustee since RACER formally commenced operations on the confirmed Plan's effective date, March 31, 2011. EPLET, LLC's initial five-year term expired on March 31, 2016, and upon recommendation by the United States after consultation with the States and Tribe in 2016, the Court reappointed EPLET, LLC to a second five-year term that expires on March 31, 2021. Dkt. No. 13607.

5. EPLET, LLC has notified the United States that it wishes to be reappointed to a third five-year term as Administrative Trustee. After having consulted with the States and with the Tribe as required by the ERT CD and as detailed below, the United States strongly supports

the requested reappointment and respectfully recommends that the Court reappoint EPLET, LLC for a third five-year term by approving and entering the proposed order that is annexed hereto.

### **JURISDICTION**

6. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. Moreover, the Court-approved ERT CD specifically provides that the Court “shall retain jurisdiction over both the subject matter of this Settlement Agreement and the parties hereto, for the duration of the performance of the terms and provisions of this Settlement Agreement for the purposes of enabling any of the parties to apply to the Bankruptcy Court at any time for such further order . . . as may be necessary or appropriate . . . to effectuate or enforce compliance with its terms.” ERT CD (Dkt. No. 9941, Ex. C), ¶ 110.

### **CONSULTATION AND RECOMMENDATION OF THE UNITED STATES**

7. The United States Environmental Protection Agency (“EPA”) as well as the Department of the Treasury (“Treasury”), which was the main debtor-in-possession lender of Debtors, have had substantial interaction with RACER and its personnel throughout the Trust’s operation, as have Department of Justice (“DOJ”) attorneys in Washington, D.C., and New York. All three agencies were consulted about the proposed reappointment of EPLET, LLC, and all supported reappointment.

8. DOJ also consulted with the States and the Tribe about the proposed reappointment. Specifically, pursuant to paragraph 42 of the ERT CD, on January 20, 2021, the United States emailed representatives of the ERT CD signatory States and Tribe as follows: “We therefore are writing to request your views concerning the possible reappointment of Mr. Laws.

The United States preliminarily and subject to your input is favorably inclined to the proposed reappointment, based on relevant federal agencies' impressions of Mr. Laws's performance of his duties and the trust's overall performance, as well as the potential expense and disruption of ongoing work that would be caused by replacing Mr. Laws. However, we very much want to hear your views before we finalize our views and make a recommendation and application to the Bankruptcy Court. . . . In addition, please let us know if you would like to arrange a conference call to discuss his possible reappointment." None of the fourteen signatory States or the Tribe objected or requested a conference call, and the only comments received were positive, with the Office of the Attorney General of the State of New York in particular stating that it "wholeheartedly endorse[d]" EPLET, LLC for reappointment.

9. The United States strongly recommends and requests the reappointment of Mr. Laws and EPLET, LLC as Administrative Trustee for a third five-year term. First, the United States is pleased with the Trust's performance, and believes that much of this success is attributable to Mr. Laws' leadership and personal contributions. None of the EPA, Treasury, the States, or the Tribe objected to reappointment, and indeed, several responses expressed strong support for EPLET, LLC's reappointment. In light of the nearly ten years of more than satisfactory performance, it would be disruptive, high-risk, and potentially harmful to the RACER Trust's performance of its mission to replace EPLET with a new, untested Administrative Trustee who lacks the benefit of EPLET's deep knowledge and experience with the RACER Trust. Second, since the last reappointment the Trust has continued its solid track record of responsiveness and commitment to effectively advance Trust purposes and the public interest, and we believe that the Trust will continue to do so under Mr. Laws' leadership. Third,

the consultative process and the Government's own evaluation did not reveal any concerns about Trust performance or any reason not to reappoint the Administrative Trustee.

**THE REQUESTED RELIEF SHOULD BE APPROVED BY THE COURT**

10. The ERT CD provides that the Court may reappoint the Administrative Trustee upon recommendation by the United States after consultation with the signatory States and Tribe. As shown above, the required consultations have occurred, and the United States strongly recommends the requested reappointment for the reasons summarized above.

**NOTICE**

11. This Motion has been served with notice that satisfies all applicable rules.

**NO PRIOR REQUEST**

12. No prior request for the relief sought in this motion has been made to this or any other Court.

WHEREFORE, the United States respectfully requests entry of an order granting the relief requested herein and such other and further relief as is just.

Dated: New York, New York  
March 17, 2021

Respectfully submitted,

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Southern District of New York  
*Attorney for the United States of America*

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f/k/a General Motors Corp., *et al.*, :  
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Debtors. : (Jointly Administered)  
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**ORDER REAPPOINTING EPLET, LLC AS ADMINISTRATIVE TRUSTEE OF THE  
REVITALIZING AUTO COMMUNITIES ENVIRONMENTAL RESPONSE (“RACER”)  
TRUST TO A THIRD FIVE-YEAR TERM THROUGH AND INCLUDING  
MARCH 31, 2026**

Upon the Motion, dated March 17, 2021 (the “Motion”),<sup>1</sup> of the United States of America, pursuant to section 105(a) of title 11, United States Code (the “Bankruptcy Code”), for entry of an order pursuant to paragraph 42 of the Environmental Response Trust and Consent Decree, Docket No. 9941, Ex. C., as more fully described in the Motion; and due and proper notice of the Motion having been provided, and it appearing that no other or further notice need be provided; and the Court having found and determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Motion is granted and EPLET, LLC, is hereby reappointed to a third five-year term as Administrative Trustee of RACER, through and including March 31, 2026; and it is

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<sup>1</sup> Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

ORDERED that this Court shall retain jurisdiction to hear and determine all matters  
arising from or related to this Order.

Dated: New York, New York  
March \_\_, 2021

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HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE